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MAY 23 2008

OFFICE OF PETITIONS

In re Application of

George Emanuel

Application No. 10/658,569

: DECISION ON PETITION

Filed: September 9, 2003

Attorney Docket No. KSY 02655 PTUS

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed May 1, 2008.

The petition is granted.

This application was held abandoned on August 13, 2007, after it was presumed that a timely and proper response was not received to the Office action mailed July 12, 2007, which set a shortened statutory period for reply of one (1) month from its mailing date. Extensions of the time for reply were available pursuant to 37 CFR 1.136(a). A response was received on August 7, 2007. By a communication mailed October 18, 2007, petitioner was informed that the response of August 7, 2007, was not fully responsive to the Office action mailed July 12, 2007. The period for reply remained as set forth in the Office action mailed July 12, 2007. A response was filed on November 12, 2007. On April 15, 2008, a Notice of Abandonment was mailed indicating that the response of November 12, 2007, was untimely as it was not accompanied by an extension of time under 37 CFR 1.136(a).

The instant petition was filed on May 1, 2008. Petitioner maintains that the response of November 12, 2007, was timely because it contained a standing general authorization to charge a deposit account for any additional fees deemed necessary, excluding the issue fee.

A review of the response filed November 12, 2007, reveals a standing authorization to charge a deposit account for additional fees, which might include fees for an extension of time. It is noted that 37 CFR 1.25(b) provides, in pertinent part that:

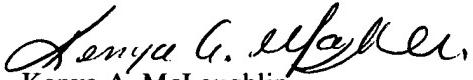
Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with a particular paper filed. An authorization to charge fees under § 1.16 in an international application entering

the national stage under 35 U.S.C. 371 will be treated as an authorization to charge fees under § 1.492. An authorization to charge fees set forth in § 1.18 to a deposit account is subject to the provisions of § 1.311(b). An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 or § 1.913 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

Accordingly, if sufficient funds were present in the deposit account on November 12, 2007, the USPTO could have charged the deposit account for the extension of time within the third month necessary to make the November 12, 2007, response timely. The petition to withdraw the holding of abandonment is granted on the basis of the general authorization to charge the deposit account found in the papers filed November 12, 2007, and the assumption that sufficient funds were in the account on November 12, 2007, to charge said amounts.

The application file is being directed to Technology Center 3700, GAU 3752 where the response of November 12, 2007, will be considered on its merits.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
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Office of Petitions